



# OLR RESEARCH REPORT

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## INTERNET SERVICE PROVIDERS' CAPS ON BANDWIDTH

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You asked for a response to a proposal by a constituent that the state bar internet service providers (ISPs) from placing a cap on the amount of bandwidth (data transmission capacity) a customer can use.

Many ISPs have introduced bandwidth caps in the past decade. The cap can be implemented in several ways, ranging from setting a single limit on data transmission speed to setting a default limit that can be raised if the customer keeps his or her usage below a specified level. Some ISPs argue that bandwidth capping prevents individual users from consuming the entire capacity of the facilities used to transmit data, a shared resource. Part of this concern is motivated by technologies such as video streaming that are very data-intensive. On the other hand, critics argue that there are no inherent limits to the amount of information that can be transmitted over the Internet, and the fees that some ISPs charge when customers exceed their bandwidth caps are a mechanism to increase their revenues.

To date, the Federal Communications Commission (FCC) has treated ISPs as enhanced service providers, rather than common carriers that are subject to federal and state regulation. The U.S. Supreme Court upheld this policy in *National Cable & Telecommunications Assn. V. Brand X Internet Services*, 545 U.S. 967 (2005). Therefore, it appears that the state could not regulate the adoption of bandwidth caps by ISPs. However, it appears that the state could enforce consumer protection laws, such as those that prohibit misleading advertising.

On December 21, 2010, the FCC approved “net neutrality” rules. Under these rules ISPs must disclose information on their network management practices, performance (e.g., download speeds), and the commercial terms of their broadband services. Fixed broadband providers, such as telephone and cable companies, may not block lawful content, applications, services, or non-harmful devices. They may not unreasonably discriminate in transmitting lawful network traffic over a consumer’s broadband Internet access service. Mobile broadband (e.g., wireless) providers may not block lawful websites or applications that compete with their voice or video services. The blocking and discrimination rules are subject to exceptions for “reasonable network management.” Further information about the FCC rules is available at <http://transition.fcc.gov/cgb/consumerfacts/openinternet.pdf>.

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